

Introduced by Senator Hancock

February 24, 2012

An act to amend Section 1798.200 of, and to add Section 1798.203 to, the Health and Safety Code, relating to emergency medical services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1378, as introduced, Hancock. Emergency medical services: personnel.

Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, establishes the Emergency Medical Services Authority (EMSA) and provides for the certification of emergency medical technicians through the issuance of certificates, including EMT-I and EMT-II certificates, by local entities, known as local EMS agencies, which are designated by counties. Existing law also permits public safety agencies, for public safety personnel, and the State Board of Fire Services, for fire safety personnel, to issue EMT-I certificates.

Existing law requires the EMSA to establish EMT-I and EMT-II certification and disciplinary guidelines. Existing law authorizes an EMT-I or EMT-II employer or medical director of a local EMS agency to investigate and discipline those EMT-I and EMT-II employees who commit specified acts. Existing law provides that the medical director of a local EMS agency or the EMSA may deny, suspend, or revoke certificates issued under these provisions, or may place a certificate holder on probation, upon the occurrence of any of specified events. Violation of the act is a misdemeanor.

This bill would revise and recast the disciplinary provisions regarding EMT-I and EMT-II certificate holders and the reasons for denying a

certificate, as specified, and would authorize a local EMS agency to issue a probationary EMT-I or EMT-II certificate.

By imposing new duties upon local officials and changing the definition of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.200 of the Health and Safety Code
2 is amended to read:
3 1798.200. (a) (1) (A) Except as provided in paragraph (2),
4 an employer of an EMT-I or EMT-II may conduct investigations,
5 as necessary, and take disciplinary action against an EMT-I or
6 EMT-II who is employed by that employer for conduct in violation
7 of subdivision ~~(e)~~ (d). The employer shall notify the medical
8 director of the local EMS agency that has jurisdiction in the county
9 in which the alleged violation occurred within three days when an
10 allegation has been validated as a potential violation of subdivision
11 ~~(e)~~ (d).
12 (B) Each employer of an EMT-I or EMT-II employee shall
13 notify the medical director of the local EMS agency that has
14 jurisdiction in the county in which a violation related to subdivision
15 ~~(e)~~ (d) occurred within three days after the EMT-I or EMT-II is
16 terminated or suspended for a disciplinary cause, the EMT-I or
17 EMT-II resigns following notification of an impending
18 investigation based upon evidence that would indicate the existence
19 of a disciplinary cause, or the EMT-I or EMT-II is removed from
20 EMT-related duties for a disciplinary cause after the completion
21 of the employer's investigation.

1 (C) At the conclusion of an investigation, the employer of an
2 EMT-I or EMT-II may develop and implement, in accordance with
3 the guidelines for disciplinary orders, temporary suspensions, and
4 conditions of probation adopted pursuant to Section 1797.184, a
5 disciplinary plan for the EMT-I or EMT-II. Upon adoption of the
6 disciplinary plan, the employer shall submit that plan to the local
7 EMS agency within three working days. The employer's
8 disciplinary plan may include a recommendation that the medical
9 director of the local EMS agency consider taking action against
10 the holder's certificate pursuant to paragraph (3).

11 (2) If an EMT-I or EMT-II is not employed by an ambulance
12 service licensed by the Department of the California Highway
13 Patrol or a public safety agency or if that ambulance service or
14 public safety agency chooses not to conduct an investigation
15 pursuant to paragraph (1) for conduct in violation of subdivision
16 ~~(e)~~ (d), the medical director of a local EMS agency shall conduct
17 the investigations, and, upon a determination of disciplinary cause,
18 take disciplinary action as necessary against the EMT-I or EMT-II.
19 At the conclusion of these investigations, the medical director shall
20 develop and implement, in accordance with the recommended
21 guidelines for disciplinary orders, temporary orders, and conditions
22 of probation adopted pursuant to Section 1797.184, a disciplinary
23 plan for the EMT-I or EMT-II. The medical director's disciplinary
24 plan may include action against the holder's certificate pursuant
25 to paragraph (3).

26 (3) The medical director of the local EMS agency may, upon a
27 determination of disciplinary cause and in accordance with
28 regulations for disciplinary processes adopted pursuant to Section
29 1797.184, deny, suspend, or revoke any EMT-I or EMT-II
30 certificate issued under this division, or may place any EMT-I or
31 EMT-II certificate holder on probation, upon the finding by that
32 medical director of the occurrence of any of the actions listed in
33 subdivision ~~(e)~~ (d) and the occurrence of one of the following:

34 (A) The EMT-I or EMT-II employer, after conducting an
35 investigation, failed to impose discipline for the conduct under
36 investigation, or the medical director makes a determination that
37 the discipline imposed was not according to the guidelines for
38 disciplinary orders and conditions of probation and the conduct of
39 the EMT-I or EMT-II certificate holder constitutes grounds for
40 disciplinary action against the certificate.

1 (B) Either the employer of an EMT-I or EMT-II further
2 determines, after an investigation conducted under paragraph (1),
3 or the medical director determines after an investigation conducted
4 under paragraph (2), that the conduct requires disciplinary action
5 against the certificate.

6 (4) The medical director of the local EMS agency, after
7 ~~consultation~~ *consulting* with the employer of an EMT-I or EMT-II
8 *and making a determination that permitting the certificate holder*
9 *to continue to engage in the certified activity without restriction*
10 *would pose an imminent threat to the public health or safety*, may
11 either temporarily suspend, ~~prior to a hearing~~, any EMT-I or
12 EMT-II certificate or both EMT-I and EMT-II certificates ~~upon a~~
13 ~~determination that both of the following conditions have been met:~~

14 (A) ~~The certificate holder has engaged in acts or omissions that~~
15 ~~constitute grounds for revocation of the EMT-I or EMT-II~~
16 ~~certificate.~~

17 (B) ~~Permitting the certificate holder to continue to engage in the~~
18 ~~certified activity without restriction would pose an imminent threat~~
19 ~~to the public health or safety or place any EMT-I or EMT-II~~
20 ~~certificate holder on probation.~~

21 (5) If the medical director of the local EMS agency temporarily
22 suspends a certificate *pursuant to paragraph (3) or (4)*, the local
23 EMS agency shall notify the certificate *holder's employer and the*
24 *certificate holder, in writing*, that his or her EMT-I or EMT-II
25 certificate is suspended and shall identify the reasons therefor.
26 Within three working days of the initiation of the suspension by
27 the local EMS agency, the agency and employer shall jointly
28 investigate the allegation in order for the agency to make a
29 determination of the continuation of the temporary suspension.
30 All investigatory information not otherwise protected by law held
31 by the agency and employer shall be shared between the parties
32 via facsimile transmission or overnight mail relative to the decision
33 to temporarily suspend. The local EMS agency shall decide, within
34 15 calendar days, whether to serve the certificate holder with an
35 accusation pursuant to Chapter 5 (commencing with Section 11500)
36 of Part 1 of Division 3 of Title 2 of the Government Code. If the
37 certificate holder files a notice of defense, the hearing shall be held
38 within 30 days of the local EMS agency's receipt of the notice of
39 defense. The temporary suspension order shall be deemed vacated
40 if the local EMS agency fails to make a final determination on the

1 merits within 15 days after the administrative law judge renders
2 the proposed decision.

3 (6) The medical director of the local EMS agency shall refer,
4 for investigation and discipline, any complaint received on an
5 EMT-I or EMT-II to the relevant employer within three days of
6 receipt of the complaint, pursuant to subparagraph (A) of paragraph
7 (1) of subdivision (a).

8 (7) *Notwithstanding any other provision of this section, the*
9 *medical director of a local EMS agency shall, in accordance with*
10 *regulations for disciplinary processes adopted pursuant to Section*
11 *1797.184, deny an application or revoke an EMT-I or EMT-II*
12 *certificate upon a finding that an applicant or certificate holder*
13 *has been convicted of any offense described in paragraph (1) of*
14 *subdivision (d). A written notice of the denial or intent to revoke*
15 *a certificate shall be sent by certified mail to the applicant or*
16 *certificate holder and employer, as appropriate. The written notice*
17 *shall notify the applicant or certificate holder of all of the*
18 *following:*

19 (A) *The reasons for the determination, including an evaluation*
20 *of evidence of rehabilitation submitted by the applicant or*
21 *certificate holder, if any.*

22 (B) *The criteria relating to rehabilitation in subdivision (e).*

23 (C) *If the decision was based on the applicant's or certificate*
24 *holder's prior criminal conviction, an explanation as to how the*
25 *prior criminal conviction is substantially related to the*
26 *qualifications, functions, or duties of prehospital personnel.*

27 (D) *If the denial of a certificate is due at least in part to the*
28 *applicant's state or federal criminal history record, the local EMS*
29 *agency shall include with the notice a copy of the applicant's*
30 *criminal history record if the applicant makes a written request*
31 *to the medical director of the local EMS agency for a copy,*
32 *specifying an address to which it is to be sent. The state or federal*
33 *criminal history record shall not be modified or altered from its*
34 *form or content as provided by the Department of Justice. The*
35 *criminal history record shall be provided in a manner that protects*
36 *the confidentiality and privacy of the applicant's criminal history*
37 *record and the criminal history record shall not be made available*
38 *by the local EMS agency to any employer.*

39 (8) *If an application is denied, the local EMS agency shall retain*
40 *a copy of the applicant's written request for a copy of his or her*

1 *criminal history record and a copy of the response sent to the*
2 *applicant, which shall include the date and the address to which*
3 *the response was sent. The local EMS agency shall make this*
4 *information available upon request by the Department of Justice*
5 *or the Federal Bureau of Investigation.*

6 (b) The authority may deny, suspend, or revoke any EMT-P
7 license issued under this division, or may place any EMT-P license
8 issued under this division, or may place any EMT-P licenseholder
9 on probation upon the finding by the director of the occurrence of
10 any of the actions listed in subdivision (c). Proceedings against
11 any EMT-P license or licenseholder shall be held in accordance
12 with Chapter 5 (commencing with Section 11500) of Part 1 of
13 Division 3 of Title 2 of the Government Code.

14 (c) ~~Any~~ *For purposes of subdivision (b), any of the following*
15 *actions shall be considered evidence of a threat to the public health*
16 *and safety and may result in the denial, suspension, or revocation*
17 *of a certificate or license issued under this division, or in the*
18 *placement on probation of a certificate holder or licenseholder*
19 *under this division:*

20 (1) Fraud in the procurement of any certificate or license under
21 this division.

22 (2) Gross negligence.

23 (3) Repeated negligent acts.

24 (4) Incompetence.

25 (5) The commission of any fraudulent, dishonest, or corrupt act
26 that is substantially related to the qualifications, functions, and
27 duties of prehospital personnel.

28 (6) Conviction of any crime which is substantially related to
29 the qualifications, functions, and duties of prehospital personnel.
30 The record of conviction or a certified copy of the record shall be
31 conclusive evidence of the conviction.

32 (7) Violating or attempting to violate directly or indirectly, or
33 assisting in or abetting the violation of, or conspiring to violate,
34 any provision of this division or the regulations adopted by the
35 authority pertaining to prehospital personnel.

36 (8) Violating or attempting to violate any federal or state statute
37 or regulation that regulates narcotics, dangerous drugs, or
38 controlled substances.

39 (9) Addiction to, the excessive use of, or the misuse of, alcoholic
40 beverages, narcotics, dangerous drugs, or controlled substances.

1 (10) Functioning outside the supervision of medical control in
2 the field care system operating at the local level, except as
3 authorized by any other license or certification.

4 (11) Demonstration of irrational behavior or occurrence of a
5 physical disability to the extent that a reasonable and prudent
6 person would have reasonable cause to believe that the ability to
7 perform the duties normally expected may be impaired.

8 (12) Unprofessional conduct exhibited by any of the following:

9 (A) The mistreatment or physical abuse of any patient resulting
10 from force in excess of what a reasonable and prudent person
11 trained and acting in a similar capacity while engaged in the
12 performance of his or her duties would use if confronted with a
13 similar circumstance. Nothing in this section shall be deemed to
14 prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace
15 officer, or a peace officer who is acting in the dual capacity of
16 peace officer and EMT-I, EMT-II, or EMT-P, from using that force
17 that is reasonably necessary to effect a lawful arrest or detention.

18 (B) The failure to maintain confidentiality of patient medical
19 information, except as disclosure is otherwise permitted or required
20 by law in Part 2.6 (commencing with Section 56) of Division 1 of
21 the Civil Code.

22 (C) The commission of any sexually related offense specified
23 under Section 290 of the Penal Code.

24 *(d) (1) For purposes of subdivision (a), any of the following*
25 *shall result in the denial or revocation of an EMT-I or EMT-II*
26 *certificate issued under this division:*

27 *(A) A conviction under Section 261, 262, 264.1, 273a, or 273ab,*
28 *subdivision (c), (d), (f), or (g) of Section 286, subdivision (a) or*
29 *(b) of Section 288, subdivision (c), (d), (f), or (g) of Section 288a,*
30 *Section 289, subdivision (a) of Section 311.1, subdivision (b) or*
31 *(c) of Section 311.2, subdivision (d) of Section 311.3, subdivision*
32 *(a) or (c) of Section 311.4, subdivision (a) of Section 311.10, or*
33 *subdivision (a) or (b) of Section 311.11 of the Penal Code, or a*
34 *conviction for any other offense for which a person is required to*
35 *register under subdivision (c) of Section 290 of the Penal Code,*
36 *or for a felony offense in which the victim is an out-of-hospital*
37 *patient or a patient or resident of a health facility, as defined in*
38 *Section 1250, that includes abuse, neglect, theft from, or financial*
39 *exploitation of, a person entrusted to the care or protection of the*
40 *applicant.*

1 (B) A felony conviction under Section 273d or subdivision (b)
2 of Section 368 of the Penal Code.

3 (2) For purposes of subdivision (a), any of the following actions
4 may result in the denial, suspension, or revocation of a certificate
5 issued under this division or in the placement on probation of a
6 certificate holder under this division:

7 (A) Fraud in the procurement of any certificate under this
8 division.

9 (B) Gross negligence.

10 (C) Repeated negligent acts.

11 (D) Incompetence.

12 (E) The commission of any fraudulent, dishonest, or corrupt act
13 that is substantially related to the qualifications, functions, and
14 duties of prehospitol personnel.

15 (F) A felony conviction for a violent or serious offense that is
16 not specified in paragraph (1), but is specified in subdivision (c)
17 of Section 667.5 or subdivision (c) of Section 1192.7 of the Penal
18 Code, unless any of the following conditions apply:

19 (i) The person was convicted of an offense and has obtained a
20 certificate of rehabilitation under Chapter 3.5 (commencing with
21 Section 4852.01) of Title 6 of Part 3 of the Penal Code or the
22 information or accusation against him or her has been dismissed
23 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

24 (ii) The person has previously disclosed the fact of each
25 conviction to the local EMS agency, and the local EMS agency
26 has made a determination in accordance with subdivision (e) that
27 the conviction does not disqualify the applicant from certification.

28 (iii) At least 10 years have elapsed from the date of conviction
29 for, or incarceration following, the underlying offense, whichever
30 is later.

31 (G) Conviction of a crime in another state that, if committed or
32 attempted in this state, would have been punishable as one or more
33 of the crimes set forth in this paragraph, unless evidence of
34 rehabilitation comparable to that set forth in clause (i), (ii), or
35 (iii) of subparagraph (F) is provided.

36 (H) An untreated addiction to, the excessive use of, or the misuse
37 of, alcoholic beverages, narcotics, dangerous drugs, or controlled
38 substances.

1 (I) *Functioning outside the supervision of medical control in*
2 *the field care system operating at the local level, except as*
3 *authorized by any other license or certification.*

4 (J) *Demonstration of irrational behavior or occurrence of a*
5 *physical disability to the extent that a reasonable and prudent*
6 *person would have reasonable cause to believe that the ability to*
7 *perform the duties normally expected may be impaired.*

8 (K) *Unprofessional conduct exhibited by either of the following:*

9 (i) *The mistreatment or physical abuse of any patient resulting*
10 *from force in excess of what a reasonable and prudent person*
11 *trained and acting in a similar capacity while engaged in the*
12 *performance of his or her duties would use if confronted with a*
13 *similar circumstance. Nothing in this section shall be deemed to*
14 *prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace*
15 *officer, or a peace officer who is acting in the dual capacity of*
16 *peace officer and EMT-I, EMT-II, or EMT-P, from using that force*
17 *that is reasonably necessary to effect a lawful arrest or detention.*
18 (ii) *The failure to maintain confidentiality of patient medical*
19 *information, except as disclosure is otherwise permitted or required*
20 *by law in Part 2.6 (commencing with Section 56) of Division 1 of*
21 *the Civil Code.*

22 (e) (1) *In determining whether to deny an application for a*
23 *certificate for any of the acts described in paragraph (2) of*
24 *subdivision (d), the medical director of the local EMS agency shall*
25 *take into consideration the following factors:*

26 (A) *The nature and seriousness of the conduct or crime under*
27 *consideration and its relationship to the person's employment*
28 *duties and responsibilities.*

29 (B) *Activities since conviction, including employment or*
30 *participation in therapy or education, that would indicate changed*
31 *behavior.*

32 (C) *The time that has elapsed since the commission of the*
33 *conduct or offense referred to in subparagraph (A) and the number*
34 *of offenses.*

35 (D) *The extent to which the person has complied with any terms*
36 *of parole, probation, restitution, or any other sanction lawfully*
37 *imposed against the person.*

38 (E) *Any rehabilitation evidence, including character references,*
39 *submitted by the person.*

40 (F) *Employment history and current employer recommendations.*

1 (G) Circumstances surrounding the commission of the offense
2 that would demonstrate the unlikelihood of repetition.

3 (H) The granting by the Governor of a full and unconditional
4 pardon.

5 (I) A certificate of rehabilitation from a superior court.

6 (2) In determining whether to deny an application for a
7 certificate for any of the acts described in subdivision (d), the
8 medical director of a local EMS agency shall not take into
9 consideration either one the following:

10 (A) A record of arrest without a conviction, unless the local
11 EMS agency investigates the incident and secures evidence,
12 whether or not related to the incident of arrest, that is admissible
13 in an administrative hearing to establish conduct by the person
14 that may reasonably pose a serious threat to the public health and
15 safety. The agency may obtain any arrest or conviction records
16 or reports from any law enforcement agency as necessary to the
17 performance of its duties to inspect, license, and investigate these
18 arrests.

19 (B) A juvenile adjudication, unless the local EMS agency
20 establishes that the person may reasonably pose a threat to the
21 public health and safety.

22 ~~(d)~~

23 (f) The information shared among EMT-I, EMT-II, and EMT-P
24 employers, medical directors of local EMS agencies, the authority,
25 and EMT-I and EMT-II certifying entities shall be deemed to be
26 an investigative communication that is exempt from public
27 disclosure as a public record pursuant to subdivision (f) of Section
28 6254 of the Government Code. A formal disciplinary action against
29 an EMT-I, EMT-II, or EMT-P shall be considered a public record
30 available to the public, unless otherwise protected from disclosure
31 pursuant to state or federal law.

32 ~~(e)~~

33 (g) For purposes of this section, “disciplinary cause” means an
34 act that is substantially related to the qualifications, functions, and
35 duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat
36 to the public health and safety ~~described in subdivision (e).~~

37 SEC. 2. Section 1798.203 is added to the Health and Safety
38 Code, to read:

39 1798.203. (a) The medical director of the local EMS agency
40 may issue a probationary EMT-I or EMT-II certificate, with

1 specific terms and conditions, to any applicant who has violated
2 any provision of this chapter, but who has met all other
3 requirements for certification and who has successfully completed
4 the examination for certification within four years of the date of
5 issuance of the initial certificate.

6 (b) Specific terms and conditions for a probationary certificate
7 may include, but are not limited to, the following:

8 (1) Continuing medical, psychiatric, or psychological treatment.

9 (2) Ongoing participation in a specified rehabilitation program.

10 (3) Abstention from the use of alcohol or drugs.

11 (4) Compliance with this chapter.

12 (c) (1) Notwithstanding any other provision of law, and for
13 purposes of this section, when deciding whether to issue a
14 probationary certificate, the local EMS agency shall request that
15 an applicant with a dismissed conviction provide proof of that
16 dismissal and shall give special consideration to an applicant whose
17 conviction has been dismissed pursuant to Section 1203.4 or
18 1203.4a of the Penal Code.

19 (2) The medical director of a local EMS agency shall also take
20 into account and consider any other reasonable documents or
21 individual character references provided by the applicant that may
22 serve as evidence of rehabilitation, as deemed appropriate by the
23 agency.

24 (d) The medical director of the local EMS agency may modify
25 or terminate the terms and conditions imposed on the probationary
26 certificate upon receipt of a petition from the applicant or certificate
27 holder.

28 (e) For purposes of issuing a probationary certificate to a
29 qualified new applicant, the local EMS agency shall develop
30 standard terms of probation that shall include, but shall not be
31 limited to, the following:

32 (1) A three-year limit on the individual probationary certificate.

33 (2) A process to obtain a standard certificate for applicants who
34 were issued a probationary certificate.

35 (3) Supervision requirements.

36 (4) Compliance and quarterly reporting requirements.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution for certain
39 costs that may be incurred by a local agency or school district
40 because, in that regard, this act creates a new crime or infraction,

1 eliminates a crime or infraction, or changes the penalty for a crime
2 or infraction, within the meaning of Section 17556 of the
3 Government Code, or changes the definition of a crime within the
4 meaning of Section 6 of Article XIII B of the California
5 Constitution.

6 However, if the Commission on State Mandates determines that
7 this act contains other costs mandated by the state, reimbursement
8 to local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.